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**Regulation FD—Fair Disclosure**

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**Reg. § 243.100 — General Rule Regarding Selective Disclosure**

- a. Whenever an issuer, or any person acting on its behalf, discloses any material nonpublic information regarding that issuer or its securities to any person described in paragraph (b)(1) of this section, the issuer shall make public disclosure of that information as provided in Rule 101(e):
  1. Simultaneously, in the case of an intentional disclosure; and
  2. Promptly, in the case of a non-intentional disclosure.
- b.
  1. Except as provided in paragraph (b)(2) of this section, paragraph (a) of this section shall apply to a disclosure made to any person outside the issuer:
    - i. Who is a broker or dealer, or a person associated with a broker or dealer, as those terms are defined in Section 3(a) of the Securities Exchange Act of 1934;
    - ii. Who is an investment adviser, as that term is defined in Section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(11)); an institutional investment manager, as that term is defined in Section 13(f)(5) of the Securities Exchange Act of 1934, that filed a report on Form 13F with the Commission for the most recent quarter ended prior to the date of the disclosure; or a person associated with either of the foregoing. For purposes of this paragraph, a “person associated with an investment adviser or institutional investment manager” has the meaning set forth in Section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(17)), assuming for these purposes that an institutional investment manager is an investment adviser;
    - iii. Who is an investment company, as defined in Section 3 of the Investment Company Act of 1940, or who would be an investment company but for Section 3(c)(1) or Section 3(c)(7) thereof, or an affiliated person of either of the foregoing. For purposes of this paragraph, “affiliated person” means only those persons described in Section 2(a)(3)(C), (D), (E), and (F) of the Investment Company Act of 1940, assuming for these purposes that a person who would be an investment company but for Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act of 1940 is an investment company; or
    - iv. Who is a holder of the issuer’s securities, under circumstances in which it is reasonably foreseeable that the person will purchase or sell the issuer’s securities on the basis of the information.
  2. Paragraph (a) of this section shall not apply to a disclosure made:
    - i. To a person who owes a duty of trust or confidence to the issuer (such as an attorney,

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- investment banker, or accountant);
- ii. To a person who expressly agrees to maintain the disclosed information in confidence;
- iii. To an entity whose primary business is the issuance of credit ratings, provided the information is disclosed solely for the purpose of developing a credit rating and the entity's ratings are publicly available; or
- iv. In connection with a securities offering registered under the Securities Act, other than an offering of the type described in any of Rule 415(a)(1)(i) through (vi) under the Securities Act (§230.415(a)(1)(i) through (vi) of this chapter) (except an offering of the type described in Rule 415(a)(1)(i) under the Securities Act (§230.415(a)(1)(i) of this chapter) also involving a registered offering, whether or not underwritten, for capital formation purposes for the account of the issuer (unless the issuer's offering is being registered for the purpose of evading the requirements of this section)), if the disclosure is by any of the following means:
  - (A) A registration statement filed under the Securities Act, including a prospectus contained therein;
  - (B) A free writing prospectus used after filing of the registration statement for the offering or a communication falling within the exception to the definition of prospectus contained in clause (a) of section 2(a)(10) of the Securities Act;
  - (C) Any other Section 10(b) prospectus;
  - (D) A notice permitted by Rule 135 under the Securities Act (§230.135 of this chapter);
  - (E) A communication permitted by Rule 134 under the Securities Act (§230.134 of this chapter); or
  - (F) An oral communication made in connection with the registered securities offering after filing of the registration statement for the offering under the Securities Act.

### **Definitions**

**Reg. § 243.101 This section defines certain terms as used in Regulation FD (Rule 100 through Rule 103).**

- a. *Intentional.* A selective disclosure of material nonpublic information is "intentional" when the person making the disclosure either knows, or is reckless in not knowing, that the information he or she is communicating is both material and nonpublic.
- b. *Issuer.* An "issuer" subject to this regulation is one that has a class of securities registered under Section 12 of the Securities Exchange Act of 1934, or is required to file reports under of the Securities Exchange Act of 1934, including any closed-end investment company (as defined in Section 5(a)(2) of the Investment Company Act of 1940), but not including any other investment company or any foreign government or foreign private issuer, as those terms are defined in Rule 405 under the Securities Act.
- c. *Person acting on behalf of an issuer.* "Person acting on behalf of an issuer" means any senior official of the issuer (or, in the case of a closed-end investment company, a senior official of the issuer's investment adviser), or any other officer, employee, or agent of an issuer who regularly communicates with any person described in Rule 100(b)(1)(i), (ii), or (iii), or with holders of the issuer's securities. An officer, director, employee, or agent of an issuer who discloses material nonpublic information in breach of a duty of trust or confidence to the issuer shall not be considered to be acting on behalf of the issuer.
- d. *Promptly.* "Promptly" means as soon as reasonably practicable (but in no event after the later of 24 hours or the commencement of the next day's trading on the New York Stock Exchange) after a senior official of the issuer (or, in the case of a closed-end investment company, a senior official of the issuer's investment adviser) learns that there has been a non-intentional disclosure by the issuer or person acting on behalf of the issuer of information that the senior official knows, or is reckless in not knowing, is both material and nonpublic.
- e. *Public disclosure.*
  - 1. Except as provided in paragraph (e)(2) of this section, an issuer shall make the "public disclosure" of information required by Rule 100(a) by furnishing to or filing with the Commission a Form 8-K disclosing that information.
  - 2. An issuer shall be exempt from the requirement to furnish or file a Form 8-K if it instead disseminates the information through another method (or combination of methods) of disclosure that is reasonably designed to provide broad, non-exclusionary distribution of the information to the public.
- f. *Senior official.* "Senior official" means any director, executive officer (as defined in Rule 3b-7 of this chapter), investor relations or public relations officer, or other person with similar functions.
- g. *Securities offering.* For purposes of Rule 100(b)(2)(iv):

1. *Underwritten offerings.* A securities offering that is underwritten commences when the issuer reaches an understanding with the broker-dealer that is to act as managing underwriter and continues until the later of the end of the period during which a dealer must deliver a prospectus or the sale of the securities (unless the offering is sooner terminated);
2. *Non-underwritten offerings.* A securities offering that is not underwritten:
  - i. If covered by , commences when the issuer makes its first bona fide offer in a takedown of securities and continues until the later of the end of the period during which each dealer must deliver a prospectus or the sale of the securities in that takedown (unless the takedown is sooner terminated);
  - ii. If a business combination as defined in Rule 165(f)(1), commences when the first public announcement of the transaction is made and continues until the completion of the vote or the expiration of the tender offer, as applicable (unless the transaction is sooner terminated);
  - iii. If an offering other than those specified in paragraphs (a) and (b) of this section, commences when the issuer files a registration statement and continues until the later of the end of the period during which each dealer must deliver a prospectus or the sale of the securities (unless the offering is sooner terminated).

**Reg. § 243.102 No Effect on Antifraud Liability**

No failure to make a public disclosure required solely by 243.100 shall be deemed to be a violation of Rule 10b-5 under the Securities Exchange Act.

**Reg. § 243.103 No Effect on Exchange Act Reporting Status**

A failure to make a public disclosure required solely by 243.100 shall not affect whether:

- a. For purposes of Forms S-2,S-3,S-8 under the Securities Act, an issuer is deemed to have filed all the material required to be filed pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) or, where applicable, has made those filings in a timely manner; or
- b. There is adequate current public information about the issuer for purposes of 230.144(c) of this chapter (Rule 144(c)).